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EXAMINER

TREHAN, AKSHAY

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KRISTIN SIMEROTH, DARIN STEPHENS,
WEI CAO, and NICK WOLFE

Appeal 2016–007049
Application 14/030,786¹
Technology Center 2600

Before ROBERT E. NAPPI, KALYAN K. DESHPANDE, and
DAVID M. KOHUT, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE²

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–7, 9–14, and 20.³ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Bushnell, Incorporated. Br. 5.

² Our Decision makes reference to Appellants’ Appeal Brief (“Br.,” filed October 23, 2015), and the Examiner’s Answer (“Ans.,” mailed May 4, 2016) and Final Office Action (“Final Act.,” mailed May 28, 2015).

³ Claim 8 has been cancelled and claims 15–19 have been withdrawn from consideration.

INVENTION

The invention is directed to a trail camera system that captures a test image after the camera has been set-up. Spec. 1–2, Abstract. The independent claims on appeal are claims 1, 7, and 20. Claim 1 is illustrative and is reproduced below.

1. A camera system comprising:
a camera operable for capturing images;
a communication device for transmitting the images to a remote computer; and
a controller pre-programmed to prompt the camera to automatically capture a test image a pre-determined number of seconds after the camera is set-up, the controller subsequently prompting the communication device to automatically send the test image to the remote computer.

REFERENCES

Sayers et al.	US 2004/0008263 A1	Jan. 15, 2004
Steinberg et al.	US 6,750,902 B1	June 15, 2004
Chang	US 2008/0122920 A1	May 29, 2008
Kelliher	US 7,623,155 B2	Nov. 24, 2009
Cohn	US 2010/0280635 A1	Nov. 4, 2010

REJECTIONS AT ISSUE

Claims 1–6 are rejected under 35 U.S.C. § 103(a) as obvious over the combination of Steinberg, Sayers, and Cohn. Final Act. 3–8.

Claims 7 and 9–14⁴ are rejected under 35 U.S.C. § 103(a) as obvious over the combination of Steinberg, Sayers, Chang, and Cohn. Final Act. 8–13.

⁴ Should there be further prosecution, we note that claims 10–12 depend upon cancelled claim 8, which was cancelled in the Amendment entered on March 31, 2015.

Claim 20 is rejected under 35 U.S.C. § 103(a) as obvious over the combination of Steinberg, Sayers, Cohn, and Kelliher. Final Act. 13–14.

ISSUES

Did the Examiner err in finding that the combination of Steinberg, Sayers, and Cohn teaches or suggests “a controller pre-programmed to prompt the camera to automatically capture a test image a pre-determined number of seconds after the camera is set-up, the controller subsequently prompting the communication device to automatically send the test image to the remote computer,” as recited in independent claim 1?

Did the Examiner err in finding it obvious to combine Steinberg, Sayers, and Cohn?

ANALYSIS

Appellants argue that the combination of Steinberg, Sayers, and Cohn fails to teach or suggest “a controller pre-programmed to prompt the camera to automatically capture a test image a pre-determined number of seconds after the camera is set-up,” as recited in independent claim 1. Br. 13. Specifically, Appellants contend that although Steinberg teaches a trail camera that a user can program to automatically take a picture at a particular time, Steinberg does not contemplate the action taking place in relation to the camera set-up process. Br. at 14. Additionally, Appellants argue that Sayers does not teach the disputed limitation because Sayers merely teaches programming a camera to start a timer when a presence is detected and taking a picture after the time(s) expires, but not a number of seconds after the camera is set-up. Br. 14.

We do not find Appellants arguments persuasive because Appellants are responding to the Examiner’s rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”). Although we find that Steinberg, alone, teaches a system that takes a picture a period of time after the camera is set-up as shown in Figures 16 and 17 (which the Examiner cited in the Examiner’s Answer on pages 4–5), we also sustain the Examiner’s rejection, which is based on a combination of Steinberg, Sayers, and Cohn. Ans. 3–8.

The Examiner finds, and we agree, that both Steinberg and Sayers teach systems that take a picture after a camera set-up. Ans. 3–5. Steinberg’s system takes a picture at a certain time or at certain intervals after set-up, and Sayers’ system takes a picture after a pre-determined number of seconds once a control button is pushed. Ans. 3–5. Although we agree with the Examiner’s interpretation (Ans. 5–6) that the first image taken after a camera has been set up is broadly, and reasonably, interpreted as a “test image” (and found in both Steinberg and Sayers), the Examiner finds further, explicit, support in Cohn that proves a “test image” was known in the art at the time of the invention. Ans. 6–8. Thus, the Examiner finds that it is the combination of Steinberg’s teaching of taking a picture after a camera set-up within Sayers’ pre-determined time period after set-up wherein the picture taken is a “test image,” as taught by Cohn, that teaches

the disputed limitation.⁵ Ans. 9. Appellants do not apprise us of error in the Examiner’s determination that the combined teachings of the references would result in the disputed limitation.

Combination of Steinberg, Sayers, and Cohn

Appellants contend that the Examiner erred in combining Steinberg, Sayers, and Cohn because the Examiner’s reasoning for the combination are “‘mere conclusory statements’ without ‘some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’”

Br. 15. Additionally, Appellants contend that the Examiner relied on impermissible hindsight to make the combination. Br. 16.

We are not persuaded by Appellants’ arguments. The Examiner provides sufficient “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citation omitted). The Examiner concludes that it would have been obvious to one of ordinary skill in the art to combine Steinberg and Sayers to enhance a temporal setting for a predetermined image capture. Final Act. 4. Additionally, the Examiner concludes that it would have been obvious to combine Steinberg and Sayers with Cohn in order to verify that the camera was set-up correctly. Final Act. 6. As such, the Examiner provides sufficient motivation, and Appellants have not explained sufficiently why the Examiner’s analysis is incorrect.

Furthermore, the Examiner uses knowledge which is within that of a person with ordinary skill in the art and does not rely solely on knowledge gleaned

⁵ We note that Appellants do not make any arguments with respect to the Cohn reference in their Brief.

from Appellants’ application. Thus, we are not persuaded by Appellants that the Examiner relies upon impermissible hindsight to improperly combine Steinberg, Sayers, and Cohn.

Accordingly, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a) as obvious over the combination of Steinberg, Sayers, and Cohn. We also sustain the Examiner’s rejection of claim 7 under 35 U.S.C. § 103(a) as obvious over the combination of Steinberg, Sayers, Chang, and Cohn; and the rejection of claim 20 under 35 U.S.C. § 103(a) as obvious over the combination of Steinberg, Sayers, Cohn, and Kelliher, as Appellants make the same arguments with respect to these claims as with claim 1.

Claims 2–6 and 9–14

Appellants do not present separate arguments for claims 2–6 and 9–14. Accordingly, we sustain the Examiner’s rejections of these claims for the reasons indicated above with respect to claims 1 and 7.

CONCLUSION

The Examiner did not err in finding that the combination of Steinberg, Sayers, and Cohn teaches or suggests “a controller pre-programmed to prompt the camera to automatically capture a test image a pre-determined number of seconds after the camera is set-up,” as recited in independent claim 1.

The Examiner did not err in finding it obvious to combine Steinberg, Sayers, and Cohn.

DECISION

We affirm the Examiner’s 35 U.S.C. § 103(a) rejections of claims 1–7, 9–14, and 20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED